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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,167	06/26/2001	Andy L. Ruse	219.40066X00	1366
23838	7590	05/03/2005	EXAMINER	
KENYON & KENYON 1500 K STREET, N.W., SUITE 700 WASHINGTON, DC 20005			JOO, JOSHUA	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/891,167	RUSE ET AL.
	Examiner	Art Unit
	Joshua Joo	2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 November 2004.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-18 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

1. Claims 1-18 are presented for examination.
2. Claims 1-18 are rejected.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh, US Patent #6,405,035 and in view of Lemelson et al, US Patent #6,028,514 (Lemelson hereinafter).

5. As per claims 1 and 13, Singh teaches an invention for forwarding messages to a subscriber device. Singh's invention comprises of (Col 8, lines 23-26. Host server has software to have the functionality of the present invention.) :

monitoring locations of access of incoming messages along with the time of day and day of week; (Col 3, lines 18-23. Agents monitor the message status, which includes receipt and access of messages for the subscriber's devices.)

storing each access of the message along the associated time of day and day of week in a database; (Col 3, line 30-31. Host server maintains a record of the access time and date of the message.)

performing a statistical trend analysis on a user basis to determine a probability of contacting the user for a given time of day and day of week at a given location; (Col 5, lines 13-

16. Host server determines which subscriber device will have the highest probability of receiving the message.)

storing in a trend analysis table the result of the statistical trend analysis performed; (Col 3, lines 9-11. Host server has memory for storing subscriber information and processing the sending of messages.)

transferring incoming messages to the location in the trend analysis table with the highest probability of contacting the user. (Col 6, lines 3-4. The message is send to the device with the highest probability of receiving the message.)

6. Singh's invention differs from the claimed invention that it monitors the receipt and access of the message but not the response to the message. Lemelson teaches an invention for monitoring a person's location, where a monitor checks for responses to paged messages. (Col 16, line 53 – Col 17, line 14).

7. It would have been obvious to one of ordinary skill at the time of the invention was made to combine the teachings of Singh and Lemelson because using Lemelson's monitoring of the response of the incoming message will improve Singh's method by providing a more accurate and reliable process for determining the location of the user. By monitoring the response of the message, there is a higher probability that the user is at the location where message was sent.

8. As per claim 7, Singh teaches an invention for forwarding messages to a subscriber device. Singh's invention comprises of:

monitoring module to monitor access by users to messages received and store the location of the receipt with a time stamp in a database; (Col 3, lines 18-23. Agents monitor the message status, which includes receipt and access of messages for the subscriber's devices.)

a trend analysis module to perform a statistical probability on the location and time stamp data in the database and determine the probability of contacting the user at each of a plurality of locations for a given time of day and storing the probability of contacting the user at each of a plurality of locations in a trend analysis table; (Col 5, lines 13-16. Host server ranks each device to determine which subscriber device will have the highest probability of receiving the message.)

forwarding module to receive an incoming message and forward the incoming message to a location with the highest probability of contacting the user as designated in the trend analysis table. (Col 3, lines 5-8. Host server receives the message request and forwards to the subscriber. Col 6, lines 3-6. After ranking the devices, the message is send to the highest ranked device.)

9. Singh's invention differs from the claimed invention that it monitors the receipt and the access of the message but not the response to the message. Lemelson teaches an invention for monitoring a person's location, where a monitor checks for responses to paged messages. (Col 16, line 53 – Col 17, line 14).

10. It would have been obvious to one of ordinary skill at the time of the invention was made to combine the teachings of Singh and Lemelson because using Lemelson's monitoring of the response of the incoming message will improve Singh's method by providing a more accurate and reliable process for determining the location of the user. By monitoring the response of the message, there is a higher probability that the user is at the location where message was sent.

11. As per claims 2, 8 and 14, Singh teaches the invention of claims 1, 7 and 13, wherein said trend analysis table comprises a user identification, a plurality of times a day and days of

week with locations of contact and probabilities of successful contact associated with each location. (Col 2, lines 59-60. Subscriber registers with host server. Col 5, lines 19-20. Subscriber provides host server a schedule of the times at which they can be contacted. Col 5, lines 13-15. Host server ranks the devices for the highest probability the subscriber will receive the message.)

12. As per claims 3, 9, and 15, Singh teaches the invention of claims 2, 8, and 14 wherein said trend analysis table further comprises a user override location that indicates probabilities of successful contact for each location are to be ignored and only the override location is to be used for contact. (Col 5, lines 59-63. The subscriber may determine which of the devices messages are to be received. Subscriber may instruct the host server to send messages to specific devices)
13. As per claims 4, 10, and 16, Singh teaches the invention of claims 3, 9, and 15 wherein the incoming messages and responses are from PSTN telephone, cellular telephone, pager, fax, voice mail, e-mail or other voice or digital communication format. (Col 6, line 62 – Col 7 line 25. Messages may originate from any number of locations through the Internet, PSTN, or wireless communication devices. Col 8, lines 3-11. The devices may include cellular telephone, facsimile, pager or Internet access)
14. As per claim 5, 11, and 17, Singh teaches the invention of claims 4, 10, and 16 where the invention further comprises of checking the user override location in the trend analysis table and transmitting the incoming message to the user override location when set. (Col 5, line 59 – col

6, line 2. Subscriber may instruct Host server which of the devices messages are to be received. Subscriber may instruct Host server to send messages to specific devices.).

15. As per claims 6, 12, and 18, Singh teaches the invention of claims 4, 10, and 16 comprising:

contacting the user at the location with the highest probability of successful contact associated with the location. (Col 6, lines 4-5. The message is send to the device with the highest rank.)

contacting the user at the location with second highest probability of success when unable to contact the user at the location with the highest probability of success. (Col 6, lines 8-14. If the subscriber doesn't access the message of the first device, the message is send to the next ranked device.).

#### *Response to Arguments*

16. Applicant's arguments filed 11/15/2004 have been fully considered but they are not persuasive.

17. Applicant argued that (1) Lemelson does not specifically disclose monitoring locations of responses to incoming messages along with the time of day and day of week; (2) Singh does not specifically disclose the monitoring of locations of responses to incoming messages; and (3) There is no suggestion or motivation to combine Singh and Lemelson beyond the impermissible use of hindsight.

Examiner traverse the argument:

18. As to point (1), Lemelson teaches of responding to messages, but does not teach of monitoring the locations of incoming messages along with the time of day of and day of week. Thus, it was used in combination with Singh, who taught of monitoring the location of access to incoming messages along with the time of day and day of week (Singh, Col 3, lines 18-31). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

19. As to point (2), Singh teaches of monitoring the location of access to incoming messages along with the time of day and day of week. Singh does not teach of monitoring the response, thus Singh was used in combination with Lemelson, who taught of responding to messages. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

20. As to point (3), in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge

gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

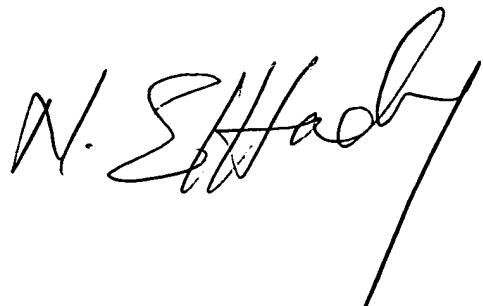
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua Joo whose telephone number is 571 272-3966. The examiner can normally be reached on Monday to Friday 7 to 4.

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on 571 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 26, 2005  
JJ

A handwritten signature in black ink, appearing to read "N. Shadley", is positioned above a diagonal line. The signature is fluid and cursive, with a distinct "N" at the beginning.